92-842
No.

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term,1992

EMERSON EMORY,M.D.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Emerson Emory,M.D.
2606 Martin L.King
Suite 216
Dallas,Texas 75215
214/421-8333
Pro se

QUESTIONS PRESENTED

1. Where Petitioner's parole status had been previously revoked for a Landlord/Tenant type of association,which had the effect of extending the Petitioner's parole time, was such an association a violation of the rule regarding association?

2. Where Petitioner had been granted early release from parole, was the special parole to be included in such release where the Court below had relinquished supervision to the parole commission.

3. Where the Petitioner had filed a Motion to Reconsider accompanied by an undated Certificate of Service* but had a Clerk's file date, did the Court of Appeals err in refusing to accept the petition?

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* The issue of service had not been previously raised. Service was made on same date as filing.

PARTIES

The caption contains the names of all the parties below.

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I. The Fifth Circuit Court of Appeals wrongly decided a novel issue of great public interest.

II. The lower Courts are in conflict on the issue of association of ex-felons previously decided by the United States Supreme Court.

III. This case presents an opportunity to correct wrongful actions of the United States Parole Commission.

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TABLE OF AUTHORITIES

CASES

Morrisey v.Brewer,408 U.S. 471

Klotz v. Ohio Adult Parole Authority, 330 FSupp. 665

Acceniega v. Freeman, 404 U.S. 4(1971)

Holland v.Cardwell 429 F2 1243

U.S. v. Furuhawa , 596 F2 921

Rostello v. MCC , 610 FSupp 964

United States v. Bonanno, 452 FSupp 743

Dimerco v. King, 469 F2 1241 (1972)

Wallace v. Chappell, 661 F2 729 (1981)

CONSTITUTIONAL PROVISIONS

Amendment V, U.S.Constitution

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STATUES

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42 U.S.C. 1982

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

EMERSON EMORY,M.D.

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

FIFTH CIRCUIT COURT OF APPEALS

Petitioner, Emerson Emory,M.D., respectfully requests that a writ of certiorari issue to review the judgement and opinion of the Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The reported opinion of the Fifth Circuit Court of Appeals is reproduced in Appendix A.

The reported opinion of the Fifth Circuit Court of Appeals denying petitioner's Motion for Reconsideration is reproduced in Appendix B.

The transcribed Order's of the trial Court which deny petitioner's Modification of Parole and for Rehearing are reproduced in Appendix C.

STATEMENT OF JURISDICTION

The opinion of the Fifth Circuit Court of Appeals denying petitioner's Motion for Reconsideration was filed August 18,1992.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution,Amendment V:

> No person shall be held to answer for a capital,or other infamous crime,unless on presentation or indictment of a Grand Jury,except in cases arising in the land or naval forces,or in the Militia,when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeppardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself;nor to be deprived

> of life,liberty or property,without due process of law; nor shall private property be taken for public use,without just com- pensation.

United States Constitution, Amendment VIII:

> Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishments inflicted.

United States Constitution, Amendment XIV:

> All persons norn or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States; nor shall any State deprive any citizen of life,liberty,or property without due process of law,nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

The Petitioner,Emerson Emory,M.D. was initially convicted in the United States District Court for the Northern District of Texas in June,1979 and sentenced to three four year terms to run consecutively. Petitioner was released on parole in September,1983 and was initially employed by the Forest Ave. Community Hospital under the supervision of Dr.Eugene Dorsey. Dr.Dorsey had previously been convicted in State Court , a fact known by the Respondent and its agents.

During this same period the Petitioner maintained an office in a building owned by Dr.Dorsey and which was also known by the Respondent and its agents. At no time was the petitioner associated with Dr.Dorsey except as Landlord/Tenant. Another parolee,Haze Willis,also rented in the same building. The petitioner,in 1985, requested early release from parole and was then told by his parole officer a white male,that he would have to move. The reason given was that the petitioner had violated the association rule. The other parolee,Haze Willis, was not ordered to move or to discontinue his relationship with Dr.Dorsey which included not only the Landlord/Tenant relationship but a business management relationship.

The petitioner attempted to show that a Landlord/Tenant relationship was not in violation, using the ruling in Arceniega v. Freeman. Petitioner even moved his office but because petitioner had failed to remove a small sign that had been in the entry foyer of the building revocation proceedings were completed .

Petitioner engaged an attorney to file for a Writ of Habeas Corpus,but the Judge would not permit the Clerk to file such a Writ, stating that it was frivilous. Petitioner later attempted to file the same Writ pro se and again was told that it was frivilous. Petitioner was also described as a Black activist in the community and needed to be taught a lession. Petitioner was returned to prison for eight months.

Petitioner was again released on parole in 1987 and in 1991 was granted early release but was continued on supervision because of a special parole given by the sentencing Judge.

Petitioner filed a case for Modification of Parole which was denied. An appeal was then filed in the Fifth Circuit Court of Appeals which was rejected as untimely although petitioner did show that he had filed within the time limit and had also filed a Motion for Rehearing within the time required. Petitioner believed that the early release included all time on parole.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit Court of Appeals has wrongly decided a case which is of great importance to the public.

The most important part of this case is the question of association of ex-felons which is prohibited by the United States Parole Commission. It has been held by the United States Supreme Court and other circuits that business contacts is not a violation of such a rule, Arceniega v. Freeman and Rostello v MCC. Petitioner contends that he was singled out because he had been described as an outspoken black man in a community where such is not tolerated.

The rulings in the cases cited above should have applied to the petitioner's case and the deleterious effect of revocation of parole would have been prevented. Why should it have been frivilous for the petitioner to attempt to stay out of prison by filing a Writ of Habeas Corpus? Such revocation causing an increase in the time required to spend under supervision.

II. The Fifth Circuit Court of Appeals has wrongly interpreted the question of timeliness of the Petitioner's Motion for Reconsideration.
The Court of Appeals itself had requested the parties to address the question of timliness. This was done and at all times the petitioner attached a certificate of service. (See Appendix D).
III- The Fifth Circuit Court of Appeals has wrongly discharged a case which has been decided upon by the United States Supreme Court. This case is important to all persons who have been convicted of a felony and is affected daily by such decisions.

The United States Supreme Court has in the past held that felons who maintain a business contact are not in violation of the association rule. Also the law has stated that any special parole given is under the supervision of the United States Parole Commission. Therefore early release from supervision should apply to all periods of such supervision.

It appears that the Petitioner's race ,Black, has been used to decide in this case, and his label of an activist.

The rulings of the lower Courts are in conflict with decisions of the United States Supreme Court.

CONCLUSION

The Fifth Circuit Court of Appeals decision in this case is not only wrong but also it and the decisions of the lower Courts are in conflict prior decisions of the United States Supreme Court and Courts of other jurisdictions.

For these reasons the Petitioner,Emerson Emory,M.D. respectfully requests that this Court issue a writ of Certiorari.

Respectfully submitted,

Emerson Emory,M.D.
Pro se

APPENDIX

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APPENDIX A:

OPINION OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT, EMORY v. UNITED STATES OF AMERICA. 1a

APPENDIX B:

OPINION OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ,EMORY V. UNITED STATES OF AMERICA

APPENDIX C.

OPINION OF THE DISTRICT COURT REGARDING REHEARING,EMORY v.UNITED STATES OF AMERICA

APPENDIX D:

CORRESPONDENCE REGARDING QUESTION OF THE TIMELINESS OF MOTIONS.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1964
Conference Calander

UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

EMERSON EMORY,M.D.

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. CR 3-79-108 H

Before DAVIS,JONES,and EMILIO M.GARZA,Circuit Judges

PER CURIAM:

Emerson Emory,M.D. argues that his motion for reconsideration was timely because he filed it within ten days after entry of the denial of his motion to modify parole.

Federal Rule of Civil Procedure 59(e), however, does not require that a motion for reconsideration be filed within ten days; it requires that the motion be served within ten days. Emory's motion for reconsideration contains no certificate of service and is undated. Nothing in the record indicates when the motion was served,if ever. The motion for reconsideration,therefore, was not a proper Rule 59(e) motion.

Consequently, the notice of appeal that Emory filed more than 60 days after the entry of denial of his motion to modify parole, was not timely. As a result, this Court is without jurisdiction to hear Emory's appeal. See Harcon Barge Co. v. D & G Boat Rentals.Inc. 784 F.2nd 665,666-67 (5th Cir.) (en banc), cert. denied,479 U.S. 930 (1986). The appeal is

DISMISSED

Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public add burdens the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

June 24,1991

UNITED STATES OF AMERICA

V. Criminal No. 3-79-108-H

EMERSON EMORY.

ORDER

Before the Court is Defendant Emory's Motion for Modification of Condition of Parole,previously received and considered by the Court and filed herewith.

For the reasons stated in the June 4,1991 letter from U.S.Probation Officer Theresa A.Shults,herewith filed, the Motion is DENIED.

SO ORDERED.

DATED: June 24,1991

BAREFOOT SANDERS,CHIEF
JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

V. Criminal No. 3-79-108-H

EMERSON EMORY

ORDER

Before the Court is Defendant Emory's Motion to Reconsider this Court's ORDER denying his Motion for Modification of Parole.

After consideration and review the Motion to Reconsider is DENIED.

SO ORDERED.

DATED: July 8,1991

BAREFOOT SANDERS
CHIEF JUDGE
UNITED STATES DISTRICT
COURT
NORTHERN DISTRICT OF
TEXAS

APPENDIX D

2606 Martin L.King

Suite 216

Dallas,Texas 75215

10 January 1992

Ms.Susan Vaughn

Office of the Clerk

United States Court of Appeals

Fifth Circuit

600 Camp St.

New Orleans,La. 70130

Re: Emory v. USA - 91-1964
In the U.S.Court of Appeals
Fifth Circuit

Dear Ms.Vaughn:

This is a reply and rebuttal of the letter of the Assistant U.S.Attorney in the above numbered case dated 7 August 1992.

The question of timeliness in this case was raised by the Court of Appeals and it was asked that it be addressed in the Appellant's Brief. Appellant

wishes to enter this letter as a reply brief regarding the argument of the Appellee on the matter of timeliness.

The date of filing of the Motion denying modification was as stated on June 24,1991. Rule 6(a) of the Federal Rules of Civil Procedure states that in the computation of time, the day of the act is excluded; therefore the ten day period began to run on June 25,1991. The Rule also states that when the period of time prescribed is less than 11 days then the intermediate Saturdays,Sundays and legal holidays shall be excluded in the computation.

Appellant's Motion to Reconsider was filed on July 8, 1991*. June 29th and 30th were days to be excluded as was July 4,a legal holiday,July 6th and 7th. Appellant's Motion to Reconsider was filed on July 8,1991, 9 days as computed under the Rule.

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* Dated filed by clerk and also served. No question of service had been raised. It is apparant that Appellee received service or he could not have answered.

Appellant's Motion to Reconsider was therefore within the time limit set by the Rules as was the Appellant's Notice of Appeal.

Therefore Appellant would request that the Court deny the appellee's request for dismissal and that the Clerk refuse to grant such dismissal based upon the letter brief of the Appellee regarding the timeliness.

Respectfully submitted,

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CC: U.S.Attorney,Dallas,Texas